**HON'BLE SRI JUSTICE P.S.NARAYANA**

**+ WRIT PETITION No.14788 of 2007**

**% Dated 29-10-2007**

**#** Between:
S.Ravi Kiran

…. Petitioner

And
The Secretary, Ministry of Company Affairs,
Shastri Bhavan, Dr.Rajendra Prasad Road,
New Delhi and 2 others … Respondents

**! Counsel for the Petitioner: Sri K.RAMAKRISHNA**

**^Counsel for Respondent Nos.1 & 2: Sri VIJAYABHASKAR MULA**

**<GIST:**

**> HEAD NOTE:**

**? Cases referred**

1. 1969 (39) Comp.Cas.781: (1969) 1 Com.LJ 350: AIR 1969 SC 707

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND SEVEN

PRESENT
**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION No.14788 of 2007**

Between:
S.Ravi Kiran

**..... PETITIONER**

AND
The Secretary, Ministry of Company Affairs,
Shastri Bhavan,Dr.Rajendra
Prasad Road,New Delhi and 2 others

**.....RESPONDENTS**

**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

**WRIT PETITION No.14788 of 2007**

**ORDER:**

1. Heard Sri Venkatesh Gupta, representing Sri K.Ramakrishna, counsel for the petitioner, and Sri Vijayabhaskar Mula, representing respondents 1 and 2.

2. Sri Venkatesh Gupta, representing Sri K.Ramakrishna, would contend that in the light of Sections 235, 236 and 237 of the Companies Act, 1956, appropriate directions can be issued even by a Writ Court under Article 226 of the Constitution of India. The counsel had also taken this Court through the respective stands taken by the petitioner in the affidavit filed in support of the writ petition and also the 2nd respondent in the counter affidavit filed in response to the affidavit filed by the petitioner.

3. On the contrary. Sri Vijayabhaskar Mula had taken this Court through the specific stand taken in the counter affidavit by the Registrar of Companies incharge, the 2nd respondent and would contend that the remedy, if any, available to the petitioner is to invoke the Company Law Board, in accordance with the provisions of the Companies Act, 1956, and hence the writ petition itself is not maintainable.

Incidentally, the learned counsel also touched the merits and demirts of the matter.

4. Heard the learned counsel on either side.

5. The writ petition is filed seeking to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the 1st respondent to appoint a competent person as investigator for investigating the affairs of the 3rd respondent Company from 1995 onwards and to file a report before this Court and to pass suitable orders.

6. It is averred that the petitioner and his relatives invested collectively Rs.5,00,000/- approximately in the stock market in the year 1995. The petitioner is an educated unemployee at relevant point of time and agreed to become the Fund Manager. It is further stated that in the year 1995 a stockbroker in Vijayawada (A.P) approached the petitioner and explained the prospectus of the 3rd respondent company. The petitioner *bona fide* believed the statements of the said broker and purchased 15000 shares of the 2nd respondent company having registered folio numbers TAL-0000499 etc., at the face value of Rs.10/- of each share. The petitioner had invested Rs.1,50,000/- in the year 1995. For the last few years the petitioner has not received any annual report nor notice of any extraordinary annual general body meeting of the company. The said facts were brought to the notice of the 2nd respondent i.e. the Registrar of the Companies, Hyderabad by the petitioner vide a letter dated 18.06.2004 and 25.10.2006. It is further stated that the 2nd respondent had referred the said complaint to the 3rd respondent Company and washed off his hands without any action for the deliberate omissions/commissions of the 3rd respondent Company under the Companies Act, 1956.

7. It is further stated that through reliable sources the petitioner came to know that the 3rd respondent Company had become allegedly sick and proposed a scheme before Board for Industrial and Financial Reconstruction (BIFR) New Delhi for revival of the Company. It is further stated that the petitioner and his relatives had invested their hard earned money of Rs.1,50,000/- in the year 1995, till today they could not get even a single rupee as return, on the top of it, the value of the shae in the market is Rs.0/-. It is further stated that on 01.05.2007 the petitioner through his counsel sent a notice to the 1st respondent with the above said facts and sought investigation by a competent person to investigate the affairs of the Company from 1995 onwards. Further specific stand had been taken that the 1st respondent ought to have noticed that the promoters/directors of the 3rd respondent company had formed the said company *prima facie* only for a fraud and to siphon off public funds worth crores of rupees. Since the petitioner and his relatives had invested hard earned money, they are interested in the affairs of the said Company and they are entitled to maintain the present writ petition.

8. In the counter affidavit filed by the 2nd respondent, it is stated that M/s.Trezer Oil Agro Tech Limited was originally incorporated as Private Limited Company in the State of Andhra Pradesh vide Certificate of Incorporation No.01-19063/94-95 on 26.12.1994. Thereafter, the Company was converted to a public limited company w.e.f.25.01.1995. The company was incorporated to pursue its main objects such as manufacture, sell, export and deal in castrol oil and soap products etc. The Annual Return made upto 30.09.2005 filed with Respondent No.2 discloses that the Company's registered office is situated at 17-3, Basapuram Road, Adoni, Kurnool, Andhra

Pradesh-516 301 and the directors of the company as on that date are Sri A.Santosh, Director, residing at 17-3, Basapuram Road, Adoni, Kurnool, Sri A.Eranna residing at the same address, and Sri S.Abdulla, residing at 1-541/26, NGO Colony, Emmigannoor Road, Adoni, Kurnool District.

9. Further it is stated that as regards the averments made by the petitioner that he has not received any Annual Return or notice of any extraordinary general body meeting of the company and the said facts were brought to the notice of the 2nd respondent i.e. the Registrar of Companies on 18.06.2004 and 25.10.2006 and the respondent No.2 washed off his hands without any action after referring the complaints to the respondent No.3 Company under the provisions of the Companies Act, 1956, it is stated that the respondent No.2 is having 54000 companies under his jurisdiction and discharging various functions under the Companies Act, 1956, with a meager staff strength of 17 excluding 5 officers and 5 group 'D' staff members. Most of the time of the respondent No.2 has to be spent over the complaints received from various shareholders of the listed companies. In pursuance of the complaints, Respondent No.2 has initiated prosecutions against the delinquent directors and the defaulting companies before the Special Judge for Economic Offences at Hyderabad and the respondent No.2 has even lodged FIRs and filed complaints against several vanishing companies which have collected huge monies from the public by issuing prospectus and thereafter disappeared. Apart from that the Respondent No.2 has filed number of complaints against the companies which have defaulted in refunding the deposit money to the deposit holders even though, the amounts got matured. Moreover, the respondent No.2 has to discharge his other statutory functions such as registration of companies documents

regularly and send replies to the complaints made under Right to Information Act and supply certified copies to various investigating authorities and Courts. Further, the petitioner being shareholder is at liberty to file complaint before the Court of Special Judge for Economic Offences under section 621 of the Companies Act, 1956 which was given at par with the Central Government to file prosecutions against the companies. Therefore, the petitioner ought to have approached the Court of Special Judge for Economic Offences by way of a complaint against M/s.Trezer Oil Agro Tech Limited and its directors for alleged defaults under the Companies Act, 1956. However, the petitioner has not availed such remedy available under the Companies Act, 1956.

10. It is also stated that the petitioner sent a notice on 01.05.2007 to the Respondent No.1 seeking appointment of Inspector to investigate the affairs of the Company from 1995 onwards is concerned, the respondent No.1 does not have any *suo moto* power to order for the investigation against the respondent No.3 company. Moreover, the petitioner has not furnished any material evidence/information showing that the company has either defrauded the investors or acted detrimental to the interest of the investments made by the shareholders or acted in oppression of the shareholders. Moreover, there is no allegation/averment made in the petition that the directors of the Company have mismanaged the affairs of the Company. In the absence of such material evidence, the respondent No.2 is not in a position to suggest for investigation against Respondent No.3 Company to Respondent No.1.

11. Further it is averred that under Sections 235 to 237 of the Companies Act, 1956, the petitioner has a remedy to approach the Company Law Board which is a statutory body having specialization to conduct the matters assigned out of the provision of the Companies

Act, 1956. The petitioner has not approached the Company Law Board at all. Even though, in case the petitioner intended to approach the Court, he should have approached the Company Court instead of filing this writ petition. In this regard, it is stated that the High Court of Kerala, in the matter of **R.V.Mohammed v. Trichur Heard Hospital (Ker) 2001 (104) Comp.Cas.267:(Ker) 2000 (38) CLA 500,** upheld that "of course, the company Court has got power to exercise in terms of Section 237(1)(ii)." But Section 237(b) empowers the Company Law Board, if there are circumstances necessitating investigation, to order accordingly. This power has been granted to the Company Law Board in terms of the amendment effected in the Act in 1988. Before the amendment, sanction had to be given in terms of such clauses (b) by the Central Government. When the power vested in the executive Government is invoked, one incumbent may perhaps feel that justice may not be meted out. But now, after the amendment in 1988 the power vested with the Central Government had been taken away and vested with the Company Law Board. When the power is conferred on the Company Law Board, it is incumbent on the petitioner to approach that statutory Board which shall examine and do justice, as the circumstances demand. In such circumstances, there arise no reason for exercising the discretionary power vested in this company Court to direct such investigation or declare that it needs investigation by the Central Government.

12. Section 235 of the Companies Act, 1956 deals with Investigation of affairs of a Company, which reads hereunder:

> **235: Investigation of affairs of a Company—**(1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in

such manner as the Central Government may direct.

(2) Where—

(a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(b) in the case of a company having no share capital, an application has been received from not less than one-fifth of the persons on the company's register of members.

The "[Tribunal] may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the Company and to report thereon in such manner as the Central Government may direct.]

13. Likewise, Section 237 of the Companies Act,1956 deals with Investigation of Company's affairs in other cases, which reads as under:

**237. Investigation of company's affairs in other cases** —Without prejudice to its powers under Section 235, the Central Government—

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if—

(i) the company, by special resolution; or

(ii) the Court, by order,

declares that the affairs of the company ought to be investigated by an inspection appointed by the Central Government; and

(b) may do so [in its opinion or in the opinion of the Tribunal] there are circumstances suggesting—

(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose;

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director or the manager, of the company

14. The power conferred on the Central Government under Sec.237(b) of the Companies Act, 1956 (hereinafter referred to as "the Act" for the purpose of convenience) is a discretionary power whereas under Section 237(a) of the Act, the Central Government is bound to appoint one or more competent persons as inspectors to investigate the affairs of a company, held in ***Rohtas Industries Ltd. v. S.d.Aggarwal***[1].

15. As can be seen from the different provisions of the Act, and also the scheme of the Act, since the petitioner is having a remedy to approach the Company Law Board or to invoke such other remedies available to him under law or under the provisions of the Companies Act, the petitioner is given liberty to pursue the other legal remedies available to him, in accordance with law.

16. Accordingly, the Writ Petition is disposed of. No costs.

**P.S.NARAYANA,J**

Dated:29.10.2007
Dsr

**Note:**

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[1] 1969 (39) Comp.Cas.781: (1969) 1 Com.LJ 350: AIR 1969 SC 707